

of rejection. In the event the examiner maintains the new ground of rejection, appellant may again appeal to the Board.

(2) *Request for rehearing.* Submit a request for rehearing pursuant to § 41.52 of this subpart relying on the Record.

(e) *Recommendation.* In its opinion in support of its decision, the Board may include a recommendation, explicitly designated as such, of how a claim on appeal may be amended to overcome a specific rejection. When the Board makes a recommendation, appellant may file an amendment or take other action consistent with the recommendation. An amendment or other action, otherwise complying with statutory patentability requirements, will overcome the specific rejection. An examiner, however, upon return of the application or reexamination proceeding to the jurisdiction of the examiner, may enter a new ground of rejection of a claim amended in conformity with a recommendation, when appropriate.

(f) *Request for briefing and information.* The Board may enter an order requiring appellant to brief matters or supply information or both that the Board believes would assist in deciding the appeal. Appellant will be given a non-extendable time period within which to respond to the order. Failure of appellant to timely respond to the order may result in dismissal of the appeal in whole or in part.

(g) *Extension of time to take action.* A request for an extension of time to respond to a request for briefing and information under paragraph (f) of this section is not authorized. A request for an extension of time to respond to Board action under paragraphs (b) and (d) of this section shall be presented as a petition under § 41.3 of this part.

§ 41.52 Rehearing.

(a)(1) Appellant may file a single request for rehearing within two months of the date of the original decision of the Board. No request for rehearing from a decision on rehearing will be permitted, unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. When a request for rehearing is made,

the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.

(2) Upon a showing of good cause, appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(3) New arguments responding to a new ground of rejection made pursuant to § 41.50(b) are permitted.

(b) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

EFFECTIVE DATE NOTE: At 73 FR 32977, June 10, 2008, § 41.52 was revised, effective December 10, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 41.52 Rehearing.

(a) *Request for rehearing authorized.* An appellant may file a single request for rehearing.

(b) *Time for filing request for rehearing.* Any request for rehearing must be filed within two months from the date of the decision mailed by the Board.

(c) *Extension of time to file request for rehearing.* A request for an extension of time shall be presented as a petition under § 41.3 of this part.

(d) *Content of request for rehearing.* The form of a request for rehearing is governed by the requirements of § 41.37(v) of this subpart, except that a request for rehearing may not exceed 10 pages, excluding any table of contents, table of authorities, and signature block. A request to exceed the page limit shall be made by petition under § 41.3 at least ten calendar days before the request for rehearing is due. A request for rehearing must contain, under appropriate headings and in the order indicated, the following items:

(1) Table of contents—see § 41.37(i) of this subpart.

(2) Table of authorities—see § 41.37(j) of this subpart.

(3) [Reserved]

(4) Argument—see paragraph (f) of this section.

(e) [Reserved]